

(b) For contracts for construction, repair, and maintenance of real property, or services to be performed outside the United States—

(1) The contractor is a domestic concern; or

(2) The contractor is a foreign concern and the contract requires acquisition of materials, equipment, or services from U.S. sources.

### Subpart 225.4—Purchases Under the Trade Agreements Act of 1979

#### 225.401 Definitions.

*Caribbean Basin country end product* includes petroleum or any product derived from petroleum.

*Eligible product* means, instead of the definition at FAR 25.401, a designated, NAFTA, or Caribbean Basin country end product in the categories listed in 225.403.70.

[59 FR 1289, Jan. 10, 1994, as amended at 59 FR 23169, May 5, 1994]

#### 225.402 Policy.

(a) To estimate the value of the acquisition, use the total estimated value of end products subject to trade agreement acts (see 225.403-70).

(1) See 225.105 for evaluation of eligible products and U.S. made end products, except when acquiring information technology end products in Federal Supply Group 70 or 74 that are subject to the Trade Agreements Act.

(c)(i) Except as provided in paragraphs (c) (ii) and (iii) of this section, do not purchase nondesignated country end products subject to the Trade Agreements Act unless they are NAFTA, Caribbean Basin, or qualifying country end products (see 225.872-1).

(ii) The prohibition in paragraph (c)(i) of this section does not apply when the contracting officer determines that offers of U.S. made, qualifying country, or eligible products from responsive, responsible offerors are either—

(A) Not received; or

(B) Insufficient to fill the Government's requirements. In these cases, accept all responsive, responsible offers of U.S. made, qualifying country, and eligible products before accepting any other offers.

(iii) National interest waivers under Section 302(b)(2) of the Trade Agreements Act are approved on a case-by-case basis. Except as delegated in paragraphs (c)(iii) (A) and (B) of this section, a request for a national interest waiver shall include supporting rationale and be submitted under department/agency procedures to the Director of Defense Procurement.

(A) The head of the contracting activity may approve a national interest waiver for a purchase by an overseas purchasing activity of products critical to the support of U.S. forces stationed abroad. The waiver must be supported by a written statement from the requiring activity stating that the requirement is critical for the support of U.S. forces stationed abroad.

(B) The Commander, Defense Fuel Supply Center, may approve national interest waivers for purchases of fuel for use by U.S. forces overseas.

[56 FR 36367, July 31, 1991, as amended at 59 FR 1289, Jan. 10, 1994; 59 FR 39974, Aug. 5, 1994; 61 FR 130, Jan. 3, 1996; 61 FR 7744, Feb. 29, 1996; 63 FR 11532, Mar. 9, 1998]

#### 225.403 Exceptions.

(c)(1)(A) If a department or agency considers an individual acquisition of a product to be indispensable for national security or national defense purposes and appropriate for exclusion from the provisions of FAR subpart 25.4, it may submit a request with supporting rationale to the Director of Defense Procurement (USD(A&T)DP).

(B) The following national security/national defense exceptions do not require approval by USD(A&T)DP—

(1) Where purchase from foreign sources is restricted by the DoD annual Appropriations or Authorization Acts (see subpart 225.70) or by the establishment of required sources of supplies and services under FAR part 8.

(2) Where competition from foreign sources is restricted under the authority of FAR 6.302-3(a)(2)(i). Provide USD(A&T)DP a copy of the justification for restricting competition in accordance with FAR 25.402(e) and FAR 6.303-1(d).

(3) Where competition from foreign sources is restricted under subpart 225.71.

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(g)(4) In accordance with Section 8094 of the Fiscal Year 1994 Defense Appropriations Act (Public Law 103-139), the exception for petroleum and any product derived from petroleum does not apply.

[56 FR 36367, July 31, 1991, as amended at 59 FR 23169, May 5, 1994; 60 FR 61597, Nov. 30, 1995; 61 FR 37841, July 22, 1996; 61 FR 50453, Sept. 26, 1996; 62 FR 34122, June 24, 1997; 63 FR 41974, Aug. 6, 1998]

### 225.403-70 Products subject to trade agreement acts.

Foreign end products subject to the Trade Agreements Act and NAFTA are those in the following Federal supply groups (FSG). If a product is not in one of the listed groups, the Trade Agreements Act and NAFTA do not apply. The definition of Caribbean Basin country end products in FAR 25.401 excludes those end products which are not eligible for duty-free treatment under 19 U.S.C. 2703(b). However, 225.401 expands the definition of Caribbean Basin country end products to include petroleum and any product derived from petroleum. The list of products has been annotated to indicate those products which are eligible for designated and NAFTA countries, but are not presently eligible for Caribbean Basin countries.

FSG	Category/Description
22	Railway equipment
23	Motor vehicles, trailers, and cycles (except 2350 and buses under 2310)
24	Tractors
25	Vehicular equipment components
26	Tires and tubes
29	Engine accessories
30	Mechanical power transmission equipment
32	Woodworking machinery and equipment
34	Metalworking machinery
35	Service and trade equipment
36	Special industry machinery (except 3690)
37	Agricultural machinery and equipment
38	Construction, mining, excavating, and highway maintenance equipment
39	Materials handling equipment
40	Rope, cable, chain and fittings
41	Refrigeration and air conditioning equipment
42	Fire fighting, rescue and safety equipment

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FSG	Category/Description
43	Pumps and compressors
44	Furnace, steam plant and drying equipment (except 4470)
45	Plumbing, heating, and sanitation equipment
46	Water purification and sewage treatment equipment
47	Piping, tubing, hose, and fitting
48	Valves
49	Maintenance and repair shop equipment (except 4920-4927, 4931-4935, 4960)
53	Hardware and abrasives
54	Prefabricated structures and scaffolding
55	Lumber, millwork, plywood, and veneer
56	Construction and building materials
61	Electric wire, and power and distribution equipment
62	Lighting fixtures and lamps
63	Alarm and signal systems
65	Medical, dental, and veterinary equipment and supplies
66	Instruments and laboratory equipment (except aircraft clocks under 6645)—See FAR 25.401 exclusion of certain watches and watch parts for certain Caribbean Basin countries
67	Photographic equipment
68	Chemicals and chemical products
69	Training aids and devices
70	General purpose ADPE, software, supplies, and support equipment
71	Furniture
72	Household and commercial furnishings and appliances
73	Food preparation and serving equipment
74	Office machines, visible record equipment and ADP equipment
75	Office supplies and devices
76	Books, maps, and other publications
77	Musical instruments, phonographs, and home type radios
78	Recreational and athletic equipment
79	Cleaning equipment and supplies
80	Brushes, paints, sealers, and adhesives
81	Containers, packaging and packing supplies (except 8140)
84	Luggage (only 8460)—See FAR 25.401 for exclusion of luggage for Caribbean Basin countries
85	Toiletries
87	Agricultural supplies
88	Live animals
91	Fuels, oils and waxes
93	Nonmetallic fabricated materials
94	Nonmetallic crude materials
96	Ores, minerals, and their primary products
99	Miscellaneous